

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**UNITED STATES OF AMERICA**

**VS.**

**MARCO ANTONIO FLORES**

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§  
§

**NO. A-96-CR-182 JRN**

**ORDER AND  
AMENDED REPORT AND RECOMMENDATION**

TO: THE HONORABLE JAMES R. NOWLIN  
SENIOR UNITED STATES DISTRICT JUDGE

Before the Court is the Defendant's Unopposed Motion for Reconsideration of United States Magistrate Judge's Report and Recommendation (Clerk's Doc. No. 72), referred to the undersigned by Judge Nowlin.

**I. BACKGROUND**

In his motion, Defendant notes that at the revocation hearing conducted in this case on July 15, 2009, all parties—including the Court—were of the mistaken view that the most serious violation of those to which the Defendant pled “True” was a Grade A violation under the advisory sentencing guidelines applicable to revocation matters. In fact, it appears that the most serious violation was a Grade B violation. Taken in conjunction with the Defendant's criminal history (which is a VI), the resulting guideline range was 21-27 months of imprisonment, as opposed to the 33-36 month range determined and relied upon by the undersigned in making his recommendation to Judge Nowlin. Based on this error, the Defendant requests that the undersigned reconsider his recommendation. Because the motion is unopposed, and because it has merit, the Court GRANTS the Defendant's Unopposed Motion for Reconsideration of United States Magistrate Judge's Report

and Recommendation (Clerk's Doc. No. 72), and revises its recommendation to Judge Nowlin in this case as set forth below.

## II. AMENDED RECOMMENDATION

After considering the matters presented in the original hearing, as well as in the motion for reconsideration, the Court RECOMMENDS, based on the original offense and the intervening conduct of the Defendant, that the Defendant's supervised release be REVOKED. The Court has taken into account the policy statements in Chapter Seven of the Sentencing Guidelines. The most serious violation is a Grade B, and the Defendant's criminal history category is VI, resulting in an (advisory) guideline range of 21 to 27 months of imprisonment. Having considered all of this, the Court RECOMMENDS that the Defendant be sentenced to 27 months of imprisonment, with no supervised release to follow.

## III. WARNINGS

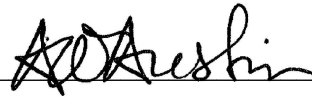
The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within ten (10) days after being served with a copy of the Report shall bar that party from de novo review by the district court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the district court to which no objections were filed. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-153, 106

S.Ct. 466, 472-74 (1985); *Douglas v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).

To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically pursuant to the CM/ECF procedures of this District, the Clerk is directed to mail such party a copy of this Report and Recommendation to the parties by certified mail, return receipt requested.

SIGNED this 28<sup>th</sup> day of July, 2009.

A handwritten signature in black ink, appearing to read "A. Austin", is written over a horizontal line.

ANDREW W. AUSTIN  
UNITED STATES MAGISTRATE JUDGE